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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220922-0195]

RIN 0648-BJ04

**Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States;
Omega Electronic Mesh Measurement Gauge Method for Measuring Net Mesh Size**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This rulemaking proposes to add the Omega net mesh measurement gauge as a permissible device for net mesh measurement and correct regulatory references to gear restrictions. This action is required to allow the use of the Omega gauge as another method for measuring and enforcing net mesh size. Adoption of the Omega gauge, a handheld electronic device, is intended to improve the efficiency, safety, and cost-effectiveness of enforcement boardings at-sea.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2021-0081, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov> and enter “NOAA-NMFS-2021-0081” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: All comments that are timely and properly submitted are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, phone: (978) 281-9232; e-mail: Spencer.Talmage@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce is authorized to implement regulations that are necessary to carry out any fishery management plan or amendment. We have preliminarily determined that the adoption of the Omega electronic net mesh measurement gauge (Omega gauge) as an enforcement tool to measure net mesh for trawl gear will improve the safety, efficiency, and cost-effectiveness of enforcement boardings at-sea. The Omega gauge will assist in the enforcement of gear requirements for all

Fishery Management Plans (FMPs) administered by the Greater Atlantic Regional Fisheries Office, but is otherwise administrative and will not result in any changes to fishing behavior or obligations to the fishing industry. We are proposing to amend the regulations in §§ 648.51(a)(2)(ii), 648.51(b)(4)(v), 648.80(f)(2), and 648.108(a)(2) to add the Omega gauge.

The Omega gauge is an automated, handheld electronic device for measuring net mesh size. To take a measurement, two metal prongs at the end of the device are inserted into a net mesh, at which point the prongs slowly separate with a standardized, pre-set force. Once the prongs can no longer separate, they stop, and produce the measurement. The Omega gauge has a measuring range of 0.4 – 11.81 inches (1 – 30 cm), and exerts a pressure of 125 Newtons (N) (12.75 kg) when used to measure mesh greater than or equal to 2.17 inches (5.51 cm) and a pressure of 50 N (5.10 kg) when used to measure mesh less than 2.17 inches (5.51 cm). The Omega gauge shows the results of completed measurements to the user via an electronic display, but also has the capability to record and store measurements internally. These records can be exported to an electronic file for later use. The mesh size produced by this device would be based on the same process as currently specified; it would be equal to the average of the measurements of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes.

The current methodology for measuring trawl net mesh size uses a wedge-shaped gauge with a taper of 0.79 inches (2 cm) in 3.15 inches (8 cm) and a thickness of 0.09 inches (2.3 mm). To measure net mesh size of less than 4.72 inches (120 mm), the wedge gauge is attached to a 5-kg weight. For nets 4.72 inches (120 mm) or larger, the gauge is

attached to an 8-kg weight. The wedge is inserted into the mesh being measured under the pressure or pull of its attached weight, and the mesh size is equal to the average of the measurements of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes.

Between 2016 and 2018, the United States Coast Guard (USCG) conducted shore-side and operational comparison studies between the wedge and Omega gauges.

At a meeting of the New England Fishery Management Council's Joint Enforcement Committee and Advisory Panel in 2018, USCG representatives presented the results of their studies and demonstrated the operation of the Omega gauge. These studies showed that the Omega gauge accurately and consistently measured the net meshes. In addition, the USCG stated that the Omega gauge is faster, easier to use, and more precise than the traditional wedge gauge.

Following the recommendation of the Joint Enforcement Committee and Advisory Panel, the New England Council recommended to us that the Omega gauge be adopted for net mesh size measurement. Subsequently, the NOAA Office of Law Enforcement and Office of General Counsel reviewed the study results, operations manual, and other information and determined the Omega gauge is suitable for net mesh measurements.

On December 13, 2021, NMFS presented information to the Mid-Atlantic Fishery Management Council regarding the Omega gauge and the ongoing development of rulemaking to adopt the Omega gauge. The Mid-Atlantic Council had not been properly informed of the development of this rulemaking, and so the December presentation

corrected that error. The Mid-Atlantic Council subsequently passed a motion by consensus to support the development of rulemaking to adopt the Omega gauge.

Background

We are also proposing to amend the regulations at §§ 648.80 (c)(2)(i), 648.80 (c)(2)(ii) and 648.125(a)(2) to correct an incorrect cross reference. The cross reference currently directs readers to minimum fish sizes in the summer flounder fishery at §648.104, but is instead intended to refer to gear restrictions in that fishery at §648.108(a)(2). The regulations that are proposed to be amended discuss gear restrictions for vessels using trawls, and so the erroneous cross references that do not direct readers to the correct information causes difficulty to public understanding of gear requirements and restrictions.

Classification

The National Marine Fisheries Service (NMFS) Assistant Administrator has made a preliminary determination that this proposed rule is consistent with section 305(d) and other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, we will consider the data, views, and comments received during the public comment period, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual determination for this determination follows.

For purposes of the Regulatory Flexibility Act, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The determination of whether the entity is large or small is based on the average annual revenue for the most recent 3 years for which data are available (in this case, from 2016 through 2018).

Any vessel fishing in the waters of the United States may be subject to boarding by the USCG or NOAA OLE for the enforcement of fishing and other regulations. This boarding may include measurement of net mesh size by the wedge-shaped gauge. Therefore, entities holding one or more fishing permits, and allowed the use of nets that may be measured by the wedge-shaped gauge, have the potential to be directly impacted by this action. According to the commercial database, there were 1,174 entities that had at least one valid permit during 2018, the last year for which affiliation information is available. Of these, 12 were classified as large with average annual gross sales of \$23.2 million and 1,162 were classified as small with average annual gross sales of \$591.8 thousand. According to gear codes found in Vessel Trip Report records, during 2018, 10 of the 12 large entities took at least one trip where the gear used could be measured via use of the Omega gauge. On average, these entities took 170 trips that would be affected by the proposed action. Similarly, during 2018 there were a total of 524 regulated small

entities that took at least one trip that would be affected by the proposed action where the average number of affected trips during 2018 was 57.

This proposed rule would not have a significant economic impact on a substantial number of small entities. It will not affect fishing operations, behavior, or effort. It would not change the minimum mesh size for any fishery or require any fishermen to purchase new gear. The only economic cost associated with the proposed rule would be to law enforcement agencies that opt to purchase the Omega gauge for use in enforcement activity. Additionally, because studies conducted by the USCG indicate that the Omega gauge is faster and lighter than the wedge gauge, it is expected that use of the Omega gauge will result in faster, safer, and more efficient boardings at-sea, constituting a minor benefit to the affected entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain any collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA), and thus will not be submitted to OMB for approval.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 23, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.51, revise paragraph (a)(2)(ii) and paragraph (b)(4)(v), to read as follows:

§ 648.51 Gear and Crew Restrictions.

(a) * * *

(2) * * *

(ii) ***Measurement of mesh size.*** Mesh size is measured by using an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10 – 300 mm (0.4 inches – 11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive

meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes when using either the Omega gauge or the wedge-shaped gauge. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings running parallel to the long axis of the net.

* * * * *

(b) * * *

(4) * * *

(v) *Measurement of twine top mesh size.* Twine top mesh size is measured by using an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10 – 300 mm (0.4 inches – 11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 8 kg (17.64 lb). The mesh size is the average of the measurements of any series of 20 consecutive meshes for twine tops having 75 or more meshes, and 10 consecutive meshes for twine tops having fewer than 75 meshes when using either the Omega gauge or the wedge-shaped gauge. The mesh in the twine top must be measured along the length of the twine top, running parallel to a longitudinal axis, and be at least five meshes away from where the twine top mesh meets the rings, running parallel to the long axis of the twine top.

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3. In § 648.80, revise paragraphs (c)(2)(i), (ii), and (f)(2), to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(2) * * *

(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, and §648.85(b)(6), the minimum mesh size for any trawl net not stowed and not available for immediate use as defined in §648.2, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, shall be that specified by §648.108(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use as defined in §648.2, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in §648.108(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

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(f) * * *

(2) ***All other nets.*** With the exception of gillnets, mesh size is measured by an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10 – 300 mm (0.4 inches – 11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater, than 120 mm (4.72 inches).

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4. In § 648.108, revise paragraph (a)(2), to read as follows:

§ 648.108 Summer flounder gear restrictions.

(a) * * *

(2) Mesh size is measured by using an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10 – 300 mm (0.4 inches – 11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 5 kg

(11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes, when using either the Omega gauge or the wedge-shaped gauge. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

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5. In § 648.125, revise paragraph (a)(2), to read as follows:

§648.125 Scup gear restrictions.

(a) * * *

(2) ***Mesh-size measurement.*** Mesh sizes will be measured according to the procedure specified in §648.108(a)(2).

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